

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on October 8, 2013

**FRANK J. BEASLEY V. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Montgomery County**  
**No. 41000394      John H. Gasaway, III, Judge**

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**No. E2008-00489-CCA-R3-PC      Filed October 29, 2013**

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JAMES CURWOOD WITT, JR., J., concurring.

I concur in the majority opinion because the majority accurately reflects *State v. Bise*, 380 S.W.3d 682 (Tenn. 2012), in yielding to trial court discretion to affirm the imposition of a maximum sentence. I only write separately to voice a concern that, after holding that 75 percent of enhancement factors relied upon by the trial court were erroneously applied as matters of law, affirming the sentence per *Bise* portrays an image of a winking, nodding, judicial Chimera. *Bise* says that the misapplication of an enhancement factor does not cancel the presumption of reasonableness of the sentence, *id.* at 709, but surely at some point the number of legal errors in misapplying enhancement factors may reach a critical mass whereupon even an in-range sentence is no longer compliant “with the purposes and principles listed by statute.” *Id.* at 709-10. I hope our supreme court will be attentive to this issue.

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JAMES CURWOOD WITT, JR., JUDGE